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YONG LEE HUA

v.

DIRECTOR OF NATIONAL REGISTRATION SABAH & ANOR

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HIGH COURT SABAH & SARAWAK, KOTA KINABALU
ABDUL RAHMAN SEBLI J
[SUIT NO: K21-29-2008]
8 SEPTEMBER 2010

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CONSTITUTIONAL LAW: *Citizenship - Deprivation - Whether issuance of MyPR by 1st defendant deprived plaintiff's Malaysian citizenship - Whether plaintiff a Malaysian citizen under art. 14(1)(a) Federal Constitution - Whether 1st defendant empowered to revoke*

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plaintiff's citizenship - Whether plaintiff suffered damages - Whether damages too remote - Federal Constitution, art. 27

The plaintiff had lost her Mykad and applied for a replacement. Instead of issuing her with a replacement Mykad, the 1st defendant issued her with a MyPR. The plaintiff alleged that the 1st defendant had cancelled her Malaysian citizenship and as a result, she had suffered damages. The issues that arose for determination were (i) whether the plaintiff was a Malaysian citizen by operation of law and if so (ii) whether the 1st defendant had deprived her of her citizenship by issuing her with the MyPR.

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Held (dismissing plaintiff's claim with costs):

(1) The plaintiff had fulfilled all the requirements under art. 14(1)(a) of the Federal Constitution to qualify herself as a Malaysian citizen by operation of law. (paras 8 & 9)

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(2) The power to revoke a citizenship lies with the Federal Government and not the 1st defendant. There was no evidence that the 1st defendant had taken any step to revoke the plaintiff's citizenship. Even if the 1st defendant had wanted to, there was nothing in the National Registration Act 1959 ('the Act') that empowered him to do so. The preamble to the Act made it clear that the purpose of the legislation was only to provide for registration of persons in Malaysia, the issuance of identity cards and for purposes connected therewith. Depriving one's citizenship was clearly not within the purview

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of the 1st defendant. Deprivation of citizenship could only be done in accordance with the procedure prescribed by art. 27 of the Federal Constitution. (paras 17-19)

(3) The issuance of the MyPR to the plaintiff was due to a mistaken belief on the part of the 1st defendant that the plaintiff was a non-citizen. The 1st defendant had tacitly acknowledged this mistake by issuing the plaintiff with a Mykad to replace the MyPR which was wrongly issued earlier. (para 20)

(4) The damages claimed were too remote so as to entitle the plaintiff to any compensation. Besides, she had failed to prove any connection between her alleged loss and damage with the 1st defendant's wrongful act. The plaintiff's failure to prove deprivation of her citizenship had undermined the whole substratum of her claim for damages. (para 4)

Case(s) referred to:

Lim Poh Choo v. Camden and Islington Area Health Authority [1980] AC 174 ***(refd)***

Ong Boon Hua & Anor v. Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors [2008] 5 CLJ 42 HC ***(refd)***

Legislation referred to:

Federal Constitution, arts. 1(3), 14(1)(a), 25, 26, 26A, 27
Rules of the High Court 1980, O. 24

For the plaintiff - Martin Idang; M/s Idang Rantau & Co
For the defendants - Steve Ritikos SFC; AG's Chambers

Reported by Kumitha Abdul Majid

JUDGMENT

Abdul Rahman Sebli J:

The Claim

[1] The plaintiff's claim is for loss and damages arising from the alleged cancellation of her Malaysian citizenship by the 1st defendant. At the conclusion of the trial, I found her claim to be not proved despite proving that the 1st defendant was wrong in issuing her with a MyPR (permanent resident) instead of a Mykad (citizen). It was also my finding that the issuance of the MyPR had not deprived the plaintiff of her citizenship.

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Background Facts

[2] The sequence of events leading to this action can be summarised as follows. In or around 1963 the plaintiff was issued with identity card No. 033213 and in 1973 she was issued with
B identity card No. H6023337. On 14 November 1996 the 1st defendant issued her with a Mykad card No. 300205-12-5152. By issuing her with a Mykad, the 1st defendant must have been satisfied that the plaintiff is a Malaysian citizen.

C **[3]** On 13 February 2007 the plaintiff lost her Mykad when her wallet was stolen by unknown persons while she was shopping at the Servey Supermarket Penampang. On 26 February 2007 she applied for a replacement Mykad. Instead of issuing her with a replacement Mykad the 1st defendant issued her with a MyPR.
D This is the 1st defendant's act that gave rise to the present action which according to the plaintiff was an act of depriving her of her citizenship.

The Central Issue

E **[4]** Several issues were raised by the parties but in my view the central issue is whether the plaintiff is a Malaysian citizen by operation of law and if so whether, by issuing her with a MyPR the 1st defendant had deprived her of her citizenship.

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Whether Plaintiff A Citizen

[5] Article 14(1) of the Federal Constitution ("the Constitution") provides as follows:

> 14(1) subject to the provisions of this Part, the following persons
G are citizens by operation of law, that is to say:
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> (a) every person born before Malaysia Day who is a citizen of the Federation by virtue of the provisions contained in Part 1 of the Second Schedule; and
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> H (b) every person born on or after Malaysia Day, and having any of the qualifications specified in Part II of the Second Schedule.

[6] The plaintiff's claim is that she qualifies under art. 14(1)(a) read with s. 2(a) of Part I of the Second Schedule which reads:

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> 2. Subject to the provisions of Part III of this Constitution, a person ordinarily resident in the State of Sabah or Sarawak or in

Brunei on Malaysia Day is a citizen by operation of law if he was immediately before that day a citizen of the United Kingdom and Colonies, and either:

(a) was born in the territories comprised in the States of Sabah and Sarawak;

[7] The Constitution does not specify "Malaysia Day" but the note to art. 1(2) refer to 16 September 1963 as the date Malaysia was established. The footnote to art. 1(3) also refer to 16 September 1963 as Malaysia Day. It is therefore safe to say that Malaysia Day falls on 16 September.

[8] To qualify as a citizen by operation of law under art. 14(1)(a) of the Constitution the plaintiff must fulfil the following requirements:

(1) She was born in Sabah;

(2) She was ordinarily resident in Sabah; and

(3) She was a citizen of the United Kingdom and Colonies immediately before Malaysia Day, ie, before 16 September 1963.

[9] The plaintiff was 80 years old at the time she gave evidence. Despite her age I found her to be physically fit and mentally alert. Her testimony is that she was born in 1930 at Kampong Mahandoi Penampang, Sabah (then known as North Borneo) and has been residing in Kampong Nosob Penampang since birth. The identity card issued to her states her place of birth as Kampong Mahandoi Penampang and her year of birth as 1930. These facts are not disputed. Exhibit P1 is proof that she was a citizen of the United Kingdom and Colonies before Malaysia Day. It is clear therefore that the plaintiff has fulfilled all the requirements to qualify as a Malaysian citizen by operation of law.

[10] The learned Senior Federal Counsel however argued that to entitle her to a Mykad the plaintiff must produce her birth certificate failing which she cannot be considered a Malaysian citizen. The basis of the contention is that only by producing her birth certificate could the plaintiff prove that she was born in Sabah. The decision of the Court of Appeal in *Ong Boon Hua & Anor v. Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors* [2008] 5 CLJ 42 was cited in support. In that case *Ong Boon Hua aka Chin*

A *Peng* who was residing in Thailand applied, *inter alia*, for an order that the Minister of Home Affairs allow him to enter and live in Malaysia. He claimed that he is a Malaysian citizen.

[11] The Minister of Home Affairs applied under O. 24 of the
B Rules of the High Court 1980 ("the RHC") for an order requiring Chin Peng to file in court his birth certificate and his citizenship certificate to prove that he was born in Malaysia or was a Malaysian citizen and that if he failed to do so, for his application to be dismissed. Chin Peng failed to comply with the court order
C and his application was accordingly dismissed by the High Court. He then appealed to the Court of Appeal.

[12] In dismissing Chin Peng's appeal the Court of Appeal held that the documents requested for were necessary in order to ascertain the issues of "Malaysian citizen" or "Malaysian origin".
D Although the court delved into the question of citizenship it seems clear to me that the decision was grounded on Chin Peng's failure to comply with the disclosure order within 14 days, and not because he had or had not proved his citizenship. The question did not arise for the court's consideration. Thus whatever that the
E court said in relation to Chin Peng's citizenship was said *en passant* and does not form part of the *ratio decidendi* of the case. It is trite principle that a case is only authority for what it decides. Nothing more should be implied as naturally flowing from the decision.

F **[13]** The decision in *Ong Boon Hua* clearly does not support the learned Senior Federal Counsel's argument that production of a birth certificate is a must before a person can be considered a citizen although at first blush it appears to be so. Article 14(1)(a) of the Constitution does not impose such condition and the Court
G of Appeal did not so decide. It is common knowledge that there are citizens, particularly those in the rural and deep interiors of Sabah and Sarawak who do not possess any birth certificate. Documentation is a concept that is alien to them. To demand that they produce their birth certificates before they can be
H considered as citizens would be to perpetrate a grave injustice.

[14] In any event whether or not a person was born in Sabah or Sarawak before Malaysia Day to qualify him as a citizen by operation of law is purely a question of fact. Production of a birth
I certificate is but one of the ways to prove this fact. It is not the only way.

[15] It is important to note that *Ong Boon Hua* is not a decision on art. 14(1)(a) of the Constitution which deals specifically with the citizenship of persons residing in the states of Sabah, Sarawak (and Brunei) and who were born in those states before Malaysia Day. Article 14(1)(a) of the Constitution was not even mentioned by the Court of Appeal. This is not surprising as the court was dealing with an O. 24 application – discovery and inspection of documents – and not on any constitutional issue.

Deprivation Of Citizenship?

[16] The plaintiff's grievance is that being a MyPR holder she was not a citizen but only a permanent resident and as such was not able to enjoy the rights and privileges accorded to a citizen. In other words she became an alien in her own country of birth. This begs the question whether she had in fact been stripped off her citizenship.

[17] The power to revoke a citizenship lies with the Federal Government and not the 1st defendant and the revocation can only be ordered on grounds stated in arts. 24, 25, 26, 26A of the Constitution. The procedure for deprivation of citizenship is provided in art. 27, as follows:

> 27(1) Before making an order under Article 24, 25 or 26, the Federal Government shall give to the person against whom the order is proposed to be made notice in writing informing him of the ground on which the order is proposed to be made and of his right to have the case referred to a committee of inquiry under this Article.
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> (2) If any person to whom such notice is given applies to have the case referred as aforesaid the Federal Government shall, and in any other case the Federal Government may, refer the case to a committee of inquiry consisting of a chairman (being a person possessing judicial experience) and two other members appointed by that Government for the purpose.
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> (3) In the case of any such reference, the committee shall hold an inquiry in such manner as the Federal Government may direct, and submit its report to that Government; and the Federal Government shall have regard to the report in determining whether to make the order.

[18] In the instant case there is no evidence that the 1st defendant had taken any step to revoke the plaintiff's citizenship. Even if the 1st defendant had wanted to there is nothing in the National Registration Act 1959 (Revised 1972) ("the Act") that

empowers him to do so. The preamble to the Act makes it clear that the purpose of the legislation is only to provide for registration of persons in Malaysia, the issuance of identity cards and for purposes connected therewith. Depriving one's citizenship is clearly not within the purview of the 1st defendant.

[19] The issuance of the MyPR to the plaintiff had nothing to do with deprivation of citizenship, much less to have such effect. It is true that MyPRs are issued to non-citizens but its issuance to a citizen does not extinguish his or her citizenship if otherwise he or she is a citizen. The fact that the plaintiff was unable to enjoy the rights and privileges of a citizen during the period she was holding the MyPR, even if true cannot be equated with deprivation of citizenship. Deprivation of citizenship can only be done in accordance with the procedure prescribed by art. 27 of the Constitution. It is straining the imagination to suggest that it can be done by simply issuing a MyPR. Herein lies the fallacy of the plaintiff's argument.

[20] On the evidence I am inclined to believe that the issuance of the MyPR to the plaintiff was due to a mistaken belief on the part of the 1st defendant that the plaintiff is a non-citizen. What the 1st defendant could do to rectify the mistake was to issue the plaintiff with the correct document, on proof that she is a citizen. No citizen should be made to suffer the ignominy of being mistaken for an alien due to the authority's mistake over his or her citizenship status. Indeed the 1st defendant tacitly acknowledged this mistake by issuing the plaintiff with a Mykad on 10 October 2008 to replace the MyPR wrongly issued earlier.

Damages

[21] The main purpose of damages in tort is to place the plaintiff in the position as if the tort had not been committed: see *Lim Poh Choo v. Camden and Islington Area Health Authority* [1980] AC 174 where Lord Scarman said at p. 187:

> … compensation should nearly as possible put the party who has suffered in the same position as he would have been in if he had not sustained the wrong.

[22] The plaintiff claimed damages under several heads but having considered her evidence in support I do not find any of the claims to be substantiated. She claimed that due to the issuance of the MyPR she suffered great anxiety and distress and had suffered loss and damage the particulars of which are as follows:

(a) Her trip to Jakarta on 13 September 2008 was cancelled. A

(b) Her bank accounts were frozen.

(c) Her husband fell sick and was admitted to the Sabah Medical Centre in March 2008 and she was unable to withdraw money from the bank to pay for her husband's medical expenses. B

(d) She was unable to withdraw money from the bank to pay for her husband's funeral expenses.

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(e) She had to borrow money from her children for the medical and funeral expenses of her late husband.

(f) She incurred travelling expenses to go to the National Registration Office.

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(g) Her friends became suspicious on her status as a citizen.

(h) Her health deteriorated requiring medical attention.

[23] I have given serious consideration to the matters raised by the plaintiff but to my mind and having regard to the evidence adduced even if the loss and damage had been incurred as claimed they are too remote to entitle her to any compensation. The plaintiff's failure to prove deprivation of her citizenship has undermined the whole substratum of her claim for damages. E F

Conclusion

[24] For reasons aforesaid it is clear to me that although the plaintiff has proved that the 1st defendant was wrong, albeit mistakenly in issuing her with the MyPR she failed to prove any connection between her alleged loss and damage with the 1st defendant's wrongful act. The question of depriving her citizenship does not arise at all. The plaintiff has therefore failed to prove her claim (for damages) on the balance of probabilities. Accordingly her claim was dismissed with costs, to be taxed unless otherwise agreed. G H

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